

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D23-498
Lower Tribunal No. 22-MH-1056

POLK COUNTY SHERIFF'S OFFICE,

Appellant,

v.

T.J.B., JR.

Appellee.

Appeal from the Circuit Court for Polk County.
Ellen S. Masters, Judge.

June 13, 2023

PER CURIAM.

The Polk County Sheriff's Office appeals the denial of a petition for risk protection order against T.J.B.¹ The facts of this case are undisputed. A school resource officer was informed that T.J.B., a high school student, was in possession

¹ This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

of a firearm on school grounds. A search of T.J.B.'s backpack revealed a Glock 42 .380 caliber handgun, a loaded magazine, and two boxes of Hornady Critical Defense ammunition.

T.J.B. explained that he was in possession of the firearm because he was scared "someone" in his neighborhood was trying to kill him. T.J.B. failed to elaborate beyond that point. The Petition for the initial ex parte risk protection order alleged that T.J.B. "has been arrested for, convicted of, had adjudication withheld, or pled nolo contendere to a crime involving violence or a threat of violence in Florida or in any other state."

Based upon that information, an ex parte risk protection order was entered. The court found that T.J.B. posed a significant danger of causing personal injury to himself or others in the near future by having in his custody or control any firearm or ammunition. The ex parte order set a compliance hearing for May 5, 2022, with a final hearing scheduled for May 17, 2022. T.J.B. was personally served with the petition and temporary ex parte order but failed to appear at either hearing. As a result, the allegations in the petition must be accepted as true. Nonetheless, the court denied the petition. This appeal followed.

Because the facts are not in dispute, we review the court's application of the facts to the law de novo. *See Davis v. Gilchrist Cnty. Sheriff's Off.*, 280 So. 3d 524,

529 (Fla. 1st DCA 2019) (holding that the application of the risk protection order statute to the facts and the legal sufficiency of the evidence are reviewed de novo).

Section 790.401, Florida Statutes, provides, in pertinent part:

Upon notice and a hearing on the matter, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court must issue a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months.

§ 790.401(3)(b). The statute sets out factors for the court to consider, including:

1. A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm.

....

9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.

....

11. Whether the respondent, in this state or any other state, has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence.

Id. § 790.401(3)(c).

The statute, known as the Marjory Stoneman Douglas High School Public Safety Act, was enacted in the aftermath of the tragic shooting at Marjory Stoneman Douglas High School in Parkland, Florida. The Act included the following findings:

The Legislature finds there is a need to comprehensively address the crisis of gun violence, including but not limited to, gun violence on school campuses. The Legislature intends to address this crisis by providing law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence, and by promoting school safety and enhanced coordination between education and law enforcement entities at the state and local level.

Ch. 2018-3, § 2, Laws of Florida².

The trial court was presented with a student who had a pending aggravated assault prosecution,³ who appeared at a location where he knew weapons were prohibited, and who was armed with a handgun and enough ammunition to conduct a mass shooting. His explanation was so vague as to be unworthy of belief. Under these circumstances, the statute compels the imposition of a risk protection order. We reverse and remand for entry of the risk protection order.

² Constitutional issues regarding this statute are not addressed in this opinion since the issues have not been raised below or on appeal.

³ The Affidavit in Support of the Petition for Temporary Ex Parte Risk Protection Order And Petition For Final Risk Protection Order indicated: "On 01/14/2021 the respondent was arrested for Assault with a Deadly Weapon and that case is still pending." The attorney for the Polk County Sheriff's Office stated at the hearing: "it was alleged that he was — I think — there's a pending charge for an Aggravated Assault with a Deadly Weapon. I was unable to confirm that. So, I — I can't tell you that that is true or not." The unrefuted fact set forth in the affidavit was that the charges were pending. T.J.B. did not appear at the hearing to rebut the allegation or present evidence to the contrary.

REVERSED and REMANDED.

STARGEL and SMITH, JJ., concur.

COHEN, J., concurs specially, with opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED

COHEN, J., concurring specially, with opinion.

When this statute was passed by the legislature, its purpose was made clear, as set forth in the majority opinion. The Legislature intended to address this crisis by providing law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence, and by promoting school safety and enhanced coordination between education and law enforcement entities at the state and local level. *Davis v. Gilchrist Cnty. Sheriff's Off.*, 280 So. 3d 524, 532 (Fla. 1st DCA 2019) (quoting Ch. 2018-3, § 2, Laws of Fla.).

As judges we are not segregated from the society in which we live. Nor are we prevented from using common sense in deciding cases. School shootings are a routine occurrence. Under these circumstances, at that location, a court should not wait for either threats of or actual violence to find that T.J.B. posed a significant danger of causing personal injury to himself or others by having in his custody or control a firearm or ammunition. As argued by the Sheriff, "This student, with no

legitimate purpose for possessing this dangerous weapon along with enough ammunition to commit a mass shooting at a school, raised a clear red flag demonstrating that he poses a significant danger of causing injury to other students."

I agree.

John W. Lees, of Polk County Sheriff Office, Winter Haven, for Appellant.

T.J.B., Jr., Lake Wales, pro se.